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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re D.L., a Person Coming Under the
Juvenile Court Law.

H046761
(Santa Cruz County
Super. Ct. No. 16JU003000)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

D.L. et al.,

Defendants and Appellants.

In September 2016, the Santa Cruz County Human Services Department (Department) filed a petition under Welfare and Institutions Code¹ section 300, subdivisions (b)(1) and (j) relative to an infant boy, D.L. (the minor). The Department alleged that the mother, R.K., and the father, D.L., had a history of substance abuse. (Hereafter mother and father are collectively referred to as parents.) Mother had used methamphetamine, marijuana, and nonprescribed valium during her pregnancy, and the minor was born with controlled substances in his system. The minor was cared for in the

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

neonatal intensive care unit of the hospital for 15 days until his discharge. The Department reported that “[a]s a newborn, [the minor] required oxygen, medication, and a feeding tube in order to survive.”

The Department removed the minor from parents’ custody, and he was placed in a foster home with D.C. and B.C. (hereafter sometimes referred to collectively as prospective adoptive parents). The minor remained in prospective adoptive parents’ home for the next 19 months.

The juvenile court sustained the allegations of the petition in November 2016 and ordered that parents receive family reunification services and supervised visitation. Father’s services were terminated at the 12-month review hearing in November 2017; mother’s services were extended by the court. And at the 18-month review hearing in April 2018, the court returned the minor to mother’s custody and care, with the Department providing family maintenance services.

On September 7, 2018, the Department filed a supplemental petition pursuant to section 387, subdivision (a) (hereafter section 387 petition). It did so after mother relapsed—taking (according to her) “ ‘a large amount of methamphetamine,’ ”—and was arrested on charges of willful cruelty to a child after tripping down the stairs of a theater with the minor in her arms in her attempt to evade the police. The Department sought out-of-home placement, denial of services to the parents, and the scheduling of a selection and implementation hearing pursuant to section 366.26 (hereafter section 366.26 hearing). After a contested hearing on October 31, 2018, the court found true the allegations of the petition and adopted the recommendations of the Department, including the scheduling of a section 366.26 hearing.

On March 27, 2019, the juvenile court conducted a joint hearing to consider (1) mother’s petition under section 388 to change order (section 388 petition), under which she sought further reunification services, and (2) a section 366.26 hearing. After consideration of evidence and argument, the juvenile court denied mother’s section 388

petition, found by clear and convincing evidence that the minor would be adopted, ordered the termination of mother's and father's parental rights, and designated D.C. and B.C. as prospective adoptive parents.

Mother and father separately appealed the March 27, 2019 orders. On appeal, mother challenges the order after the section 366.26 hearing; she does not challenge the order denying her section 388 petition, or the order designating D.C. and B.C. as prospective adoptive parents. She contends that she established that there was a beneficial relationship between the minor and herself, the severance of which would be detrimental to the minor. She asserts that the juvenile court therefore erred in terminating her parental rights and in finding that the minor was adoptable. Father joins in and adopts mother's appellate argument. He does not present separate grounds or argument in his appeal.

We need respond only to the merits of the appeal by mother.² After considering mother's contentions and carefully reviewing the record, we conclude that substantial evidence supports the juvenile court's implied finding that mother failed to show the existence of a beneficial parent-child relationship. We conclude further that even assuming the court impliedly found its existence, the court did not abuse its discretion by concluding that the existence of such beneficial parent-child relationship did not constitute a compelling reason for finding that termination of mother's parental rights would be detrimental to the minor. We will therefore affirm the court's orders of March 27, 2019.

² Because father fails to present any substantive arguments in support of his appeal, we will not consider any challenge that he might assert to the termination of *his* parental rights at the section 366.26 hearing, nor will we recite evidence (e.g., his visitation with the minor) that may be relevant thereto. (See *Nisei Farmers League v. Labor & Workforce Development Agency* (2019) 30 Cal.App.5th 997, 1018 [perfunctory arguments in appellate briefs deemed abandoned].)

I. FACTS AND PROCEDURAL HISTORY

A. Petition and Detention Order (September 2016)³

On September 26, 2016, the Department filed a petition on behalf of the minor. In the petition, as amended, the Department alleged under subdivision (b)(1) of section 300 that the minor was at substantial risk of suffering severe emotional damage due to (1) mother's history of abuse of controlled substances, including benzodiazepines, methamphetamine, and marijuana, and (2) father's history of abuse of controlled substances, including methamphetamine, marijuana, and hallucinogens.

Mother used methamphetamine, marijuana, and nonprescribed valium while pregnant with the minor. She reported that she had used methamphetamine every few days throughout her pregnancy, and that she had "last used methamphetamine and valium 'a few days' before she gave birth to her son." The minor was born with controlled substances in his system and was suffering from withdrawal symptoms that included respiratory distress and an inability to take food. He was placed in the hospital's neonatal intensive care unit. After giving birth to the minor, mother tested positive for benzodiazepine, amphetamines, and cannabinoids. Two days after the minor was born,

³ There have been six appeals and writ proceedings (including the present matter) arising out of this dependency proceeding that have been pending at one time or another in this court. (See *In re D.L.* (June 28, 2018, H045036) [nonpub. opn.] [appeal by D.C.]; *D.C. v. Superior Court*, summarily denied Mar. 1, 2018, H045411 [writ petition by D.C. and B.C.]; *D.C. v. Superior Court*, denied without prejudice Mar. 1, 2018, H045479 [writ petition by D.C. and B.C.]; *In re D.L.* (Sept. 11, 2018, H045491 [dismissal order filed] [appeal by D.C. and B.C.]; *R.K. v. Superior Court* (Jan. 23, 2019, H046371) [nonpub. opn.] [writ petition by mother].) Mother has requested that we take judicial notice of the record and any opinions filed in these prior appeals and writ proceedings. We grant that request for judicial notice. (Evid. Code, §§ 452, subd. (d), 459, subd. (a); see also *ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd.* (2016) 5 Cal.App.5th 69, 73, fn. 3.) We will utilize a significant portion of the factual and procedural discussion in *R.K. v. Superior Court*, *supra*, H046371 in our recitation of the factual and procedural background herein.

mother left the hospital against medical advice. She later reported that she had done so because she “ ‘wanted to use [drugs].’ ”

Mother reported that she was homeless and camping in the Santa Cruz area. She stated that father had been incarcerated during the majority of her pregnancy. Neither mother nor father was employed or had a car. The Department advised: “The mother and father reported that they do not have and have not made a plan for adequate housing, clothing, or resources to care for [the minor] upon his discharge from Dominican Hospital NICU.”

Father used controlled substances with mother while she was pregnant with the minor. Father was homeless at the time of the petition’s filing, supported himself through the commission of criminal acts, and was a registered sex offender.

The Department alleged further that, under subdivision (j) of section 300, mother’s older child (the minor’s half-sibling), C.K., was previously abused or neglected within the meaning of section 300; C.K. was adjudicated a dependent child by the Santa Cruz County Superior Court (juvenile court) in September 2009. The dependency arose out of an incident in May 2009 in which mother was arrested for child endangerment, resisting arrest, assaulting a police officer, and driving under the influence. Mother—who was intoxicated with a blood-alcohol level of 0.105 percent and admitted that she had taken Vicodin while drinking heavily at a restaurant—had driven away from the restaurant after an altercation with the manager. C.K. (then approximately three years old) was with mother and unrestrained in the front seat. “[M]other resisted arrest and was physically removed from her car by police in front of her daughter[,] who was reported to be crying and visibly shaking.” Mother was provided with court-ordered services. There were allegations against mother of substance abuse, including marijuana and prescription

medications, in the prior dependency proceeding.⁴ Ultimately, in April 2014, the superior court (family court) awarded sole legal and physical custody of C.K. to her father.

The Department reported that mother had a criminal history that consisted of (1) a 2009 conviction for resisting or obstructing a peace officer (Pen. Code, § 148, subd. (a)); (2) a 2009 conviction for driving while under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)); (3) an arrest in April 2015 for possession of a controlled substance; and (4) an arrest in August 2015 for possession of a controlled substance.

On September 27, 2016, the juvenile court found that a prima facie showing had been made that the minor came within section 300. It ordered the minor detained and that temporary placement be vested with the Department and ordered supervised visitation of at least three times per week for parents.

B. Jurisdiction/Disposition Report and Hearing (November 2016)

In its October 2016 jurisdiction/disposition report, the Department advised that the minor had been discharged from the hospital on October 1, 2016, and he had been placed with a foster family, D.C. and B.C, where he appeared to be adjusting “with no observable mental or emotional changes.” Despite having been born drug-exposed, there were no medical or developmental concerns as of the time of the Department’s report.

Mother, after testing positive for drugs on September 20 and 21, 2016, had 12 negative blood tests between September 23 and October 19. After the minor’s discharge from the hospital, father and mother jointly visited him under supervision on nine occasions between October 4 and October 21.

On November 1, 2016, the court sustained the allegations of the amended petition, and it declared the minor to be a dependent of the court in out-of-home placement. The

⁴ Mother reported to the Department in the present dependency proceeding that she had used methamphetamine as a teenager, but that she had been “sober for 17 years, until April 2015 [*sic*] because she lost custody of her oldest child, [C.K.]”

court ordered that family reunification services be provided to parents, and it ordered supervised visitation for both mother and father a minimum of three times per week. It further ordered that mother submit to a psychological evaluation.

C. De Facto Parent Status Request (March 2017)

In March 2017, D.C. and B.C. filed a request to be appointed the minor's de facto parents. They explained that they had been the minor's caregivers for the five months since his release from the hospital. B.C. worked full time and D.C. stayed home full time with the baby, allowing her to care for him, to work on his in-home occupational therapy exercises, and to take him to appointments. B.C. and D.C. stated they "would wholeheartedly welcome [the minor] if adoption [became] an option."

D. Six-Month Review Report, Hearing and Order (April 2017)

1. Department's Report

On March 30, 2017, the Department reported that although parents had "completed a few of their case plan activities, there ha[d] been a lack of follow[-]through with crucial aspects such as substance abuse testing, treatment and individual counseling. [Parents had] also missed a significant [number] of visits with their son throughout this reporting period."

Mother had been referred to Janus Perinatal for her substance abuse issues and had completed the three-month program on December 20, 2016. Thereafter, mother declined the Department's suggestion that she enroll in a sober living environment because she did not want to leave father homeless by himself. Mother advised the Department that she would enroll in Sobriety Works as an outpatient, but had failed to do so. In February 2017, mother again advised the Department that she intended to enroll at Sobriety Works; although she and father had a scheduled intake date thereafter, they did not follow through with it.

Mother drug-tested negative during her stay at Janus Perinatal from September 20 to December 20, 2016. After leaving Janus Perinatal, she was referred to Doctors on Duty for follow-up drug testing, but she had not gone forward with such testing.

It was reported that in October 2016, mother was referred to La Manzana Community Resources. Mother completed a four-week intensive early parenting education class. Mother had also been participating regularly in the Leaps and Bounds program.

Mother had submitted to an evaluation by Deborah Vitullo, Clinical Psychologist, on December 16, 2016. Dr. Vitullo recommended that mother receive drug and alcohol treatment and testing, as well as “individual therapy focused on underlying characterological/personality disorder issues.”

The Department reported that parents had visited fairly consistently with the minor up until January 4, 2017. Parents either no-showed or cancelled on 10 occasions between January 4 and February 27, 2017.

The Department reported that the minor was healthy and had appeared to adjust well to his foster home. The foster home was reportedly a concurrent home.

2. *Six-Month Review Hearing*

The court conducted a six-month review hearing on April 18, 2017. Neither father nor mother appeared at the hearing. The court ordered family reunification to continue, cautioning that if parents failed to participate in any court-ordered treatment program or failed to cooperate or use services provided in the case plan, services might be terminated. The court granted the prior request of D.C. and B.C. and found them de facto parents of the minor.

E. 12-Month Review Report, Hearing and Order (November 2017)

1. *Department's Report*

In its report filed September 26, 2017, the Department advised that mother and father were not at the time an intact couple and that “[i]n the past, their codependence

ha[d] stunted their ability to prioritize their child and follow through with their case plan activities.” Mother had separated from father in April 2017 and had moved into a sober living environment. She had contact with father in June and had relapsed for two days. She returned to her sober living home after having tested clean, and she reported that she had not had contact with father since her June relapse. Mother completed the Intensive Outpatient Program on September 5, 2017, and had been attending the Aftercare Program each Monday. She also attended 12-step meetings and Codependency Anonymous meetings.

After entering the sober living environment on April 26, 2017, mother had tested negative for all substances, except for the period of her June relapse. She had 28 negative tests between April 30 and August 5, 2017, with one positive test for methamphetamine on June 25.

After mother completed a psychological evaluation in December 2016 and after Dr. Vitullo sent her report to the Department in January 2017, mother was referred to the Parents Center for individual counseling. After being referred to a private therapist, Katherine Zwick, and after missing two appointments, mother met with Zwick on June 19 and on five subsequent occasions.

The Department reported that mother had met weekly with a social worker from Families in Transition since early June 2017 and that she continued to work on her parenting skills through the Leaps and Bounds organization. The Children’s Services coordinator reported that mother was “very intelligent and [made] good connections between concepts regarding early childhood development [and] . . . respond[ed] quickly to new information and direction.”

Until late April 2017, mother and father visited the minor together but missed many visits. Because mother did not confirm her appointment two hours before the scheduled visit, she was considered a no-show on eight occasions between May 8 and July 18, 2017. She was also reported to have had “challenges with regulating herself in

visits and prioritizing her son's needs." She became consistent with her visits in late July 2017 and was able to transition in late August to loosely supervised visits. The Department reported that mother had "worked hard to attune to her child's needs and continue[d] to arrive to visits on time, prepared with all of the necessary items for the child and open to feedback from the visit supervisor regarding the child's needs."

The Department reported that the minor was living in a concurrent foster home. It was apparent that he had "adjusted well to his current foster home with no observable mental or emotional challenges. . . . [The foster mother reported] that [the minor] often struggle[d] transitioning from visits back to his regular schedule."

The Department concluded that although mother had made "great strides with her services and visitation," it had been a slow process and it was "unable to confidently report that the child can safely be returned to her care at this time." It stated that notwithstanding mother's progress, it could not be determined whether the positive "changes [could] be sustained by [mother] over time and the safety risks to the child mitigated." The Department therefore recommended that services to mother and father be terminated and that the court set a selection and implementation hearing pursuant to section 366.26.

2. *Caregiver Report*

Prospective adoptive parents, D.C. and B.C., reported that the minor was healthy overall and had a healthy appetite. He had progressed in occupational therapy and was scheduled for a final review in October 2017. The minor's parents had attended only one of his medical appointments in the prior six months and had not attended any occupational therapy sessions between January and June 2017.

D.C. and B.C. advised that the minor recognized both parents and was "agreeable" when he was left for visits. But, the prospective adoptive parents reported, the minor "has reacted very negatively to nearly all of his visits over the last 6+ months. . . . [The minor] acts like a totally different child on visit days than on non-visit days. His

reactions to visits have gotten worse as time goes by rather than improving.” (Original underscoring.)

D.C. and B.C. requested that reunification services be terminated and that they be given consideration as the permanent home for the minor.

3. *12-Month Review Hearing*

At the November 7 hearing, previously scheduled as a settlement conference preceding the 12-month review hearing (set for November 13), the Department advised the court that it had changed its recommendation, concluding that, based upon mother’s performance over the prior six months with respect to substance abuse treatment, testing, family counseling, and visitation, she should continue to receive reunification services. The Department reiterated its recommendation that father’s services be terminated, and father agreed to submit the matter. Prospective adoptive parents opposed the Department’s recommendation that mother receive additional services.

The court ordered that mother continue to receive services, finding she had made substantial progress in mitigating the causes and concerns that resulted in the minor’s removal and that “the additional evidence concerning mother’s sobriety . . . [was] very convincing.” The court terminated father’s services, finding that he had made minimal progress in his case plan. The court determined that return of the minor to parents would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being; found by clear and convincing evidence that parents had been provided reasonable services to mitigate the concerns that brought the minor to the Department’s attention; and concluded there was a substantial probability the minor could be returned to mother within the next six-month period, i.e., prior to the 18-month hearing. The minor would thus remain a dependent child in out-of-home care placed with prospective adoptive parents. The court ordered that father receive supervised visitation of the minor every three weeks, and that mother receive supervised visitation three times per week.

F. Eighteen-Month Review Hearing (April 2018)

1. Reports

The Department advised the court—in a report filed on April 6, 2018, and in a later addendum—that after a Team Decision Meeting on February 13, 2018, the Department had increased mother’s unsupervised visits and had permitted several overnight visits in March 2018. The minor was involved in an extended visit with mother that had commenced on March 27, 2018. It reported that mother had “continue[d] to make progress towards meeting her case plan objectives which include: complying with all court orders, developing a positive support system with friends and family, showing she knows age appropriate behavior for her son, staying free from illegal drug use and living free from drug dependency, and obtaining and maintaining a stable and suitable residence for herself and her son [Mother] continues to participate in her case plan activities which include: individual therapy . . . , parenting education, drug testing, and Family Preservation Court attendance.” Mother reported that she had been clean and sober since June 21, 2017. She had tested negative for all substances on a number of occasions after a relapse in June 2017, including recent testing on March 28, April 3, and April 10, 2018. Mother had also located and moved into her own apartment in March 2018.

The social worker, Carmen Carlos, reported that she had made unannounced visits of mother and the minor at the Sober Living Environment house, at the Rebele Family Shelter, and in mother’s new home in Watsonville. Carlos concluded that the minor was cared for well, he appeared to be happy and healthy, and mother was attendant to his needs. From the visits to the new home, Carlos also observed that the home was clean, organized, and stocked with food.

The Department recommended that the minor remain a dependent child and that he be returned to mother’s care with family maintenance services offered to mother.

Prospective adoptive parents, D.C. and B.C., submitted a caregiver information form in April 2018. They expressed apprehension that the health and safety of the minor under mother's care were still significant concerns, arguing that the Department was "*still* unsure if the birth mother is a safe placement." (Original italics.) D.C. and B.C. noted that mother had failed to attend the minor's scheduled 18-month well-child care and immunization appointment despite prospective adoptive parents' having given mother two reminders on separate occasions. Prospective adoptive parents recommended that the court terminate mother's services and schedule a 366.26 hearing.

Lois Santero, a representative of the Court Appointed Special Advocates of Santa Cruz County (CASA), submitted a report in April 2018. She noted that a representative of the Leaps and Bounds organization reported positively on March 19, 2018, concerning mother's relationship with the minor and that mother had made progress in learning appropriate parenting. Santero stated that the increased time spent by the minor with mother had been difficult for him and that D.C. and B.C. had indicated "concerns about [the minor] getting enough food, naps, his health (they report he often smelled of cigarettes), and his safety – when they witnessed him being held to his Mom's chest without a helmet while she was riding a bike."

Santero noted and opined that the minor had "lived in his concurrent resource home [with D.C. and B.C.] since the release from the NICU. It was a very positive environment for him, rich with love and dedication to meeting his needs. It is the only family he knew at that time." Santero stated that she and her supervisor were invited to a Team Decision Meeting on February 16, 2018, to discuss proposed overnight visits. At the beginning of the meeting, mother stated she did not want CASA involved; Santero and her supervisor were dismissed from the meeting. Mother thereafter declined contact with Santero and asked that she be dismissed from the case. Based upon her involvement in the case, it was Santero's recommendation that (1) family reunification be terminated,

(2) the minor remain in his current foster placement, (3) the case should proceed toward adoption, and (4) mother continue to have visitation that was supervised.

2. *Hearing*

The court conducted the eighteen-month review hearing on April 19, 2018. It adopted the Department's recommendations. It ordered the minor to continue as a dependent child of the court. The court found that the risk had been reduced to a level that permitted the minor to be returned to mother's care and ordered such return, and it ordered that family maintenance services for mother commence. The court scheduled a six-month family maintenance review hearing for October 2, 2018.

G. *Petition (§ 387) and Hearing (October 2018)*

1. *Petition Under Section 387*

On September 7, 2018, the Department filed a supplemental petition pursuant to section 387, subdivision (a). The Department alleged that on September 5, the minor was placed into protective custody by the Capitola Police Department after mother's arrest on charges of willful cruelty to a child (Pen. Code, § 273a, subd. (a)).

According to the police report attached to the Department's section 387 petition, police were dispatched on September 5 at 9:00 p.m. based upon a report of a woman possibly under the influence carrying a small child. Upon arriving at the scene, the police were told by a witness that the woman with a small child had asked to use a phone and said that "she was running from CPS." Officers located the woman, later identified as mother, exiting a movie theater with a small child in her arms. Upon mother's encountering the police, she quickly turned around and reentered the theater. Officer Zamon pursued mother, who entered one of the interior theaters. As Officer Zamon followed mother, she ran down the stairs, ultimately tripping and falling with the minor in her arms. The officer asked mother to place the child on a seat; mother refused, and after attempting to pull away, Officer Zamon handcuffed her right wrist. Mother ultimately placed the minor, who was crying and very wet, in a seat. Mother's clothing was also

very wet, and she claimed it was wet because she had been running. Mother “was very emotional during [Officer Zamora’s] contact with her and stated she was sorry she had used again and relapsed.” Mother admitted to the police that she had relapsed on September 4 “on ‘a large amount of methamphetamine.’” Police reported that “they suspected the mother had also used [on September 5] or had used such a large amount of methamphetamine that she was still actively showing signs of being loaded.” Mother also advised the police that she had “recently lost her housing and . . . she cannot care for [the minor].” Mother was taken into custody and she was transported to county jail and booked.

According to the Department’s investigative narrative report, when Supervising Social Worker Emily Simoni arrived at the theater on the evening of September 5, she found the minor playing hide and seek with the police officers on the scene; after losing interest in the game, he asked to be held by mother. After mother began holding the minor, he slapped her and he started crying and “was inconsolable.” Mother “begged” Simoni to allow the minor to stay in mother’s care. Mother repeatedly told Simoni, “‘I am such an asshole; how could I do this?’”

On September 6, Social Worker Jeremy Lansing and a social work intern interviewed mother at the jail. Mother presented as very sad and dejected and had visible open scabs on her face. She “[a]ppeared highly agitated as evidenced by frequent head jerks and frantic hand movements.” Mother said that she had not slept in two days. She told the social workers that she had “snorted” unspecified drugs earlier in the week (later clarifying that she had done so on September 4), and had informed her sponsor and a roommate that she had relapsed. The roommate stayed with mother and the minor while mother “was coming down from using.” On September 5, the roommate kicked mother out of the apartment on short notice “because of the friends the mother had at the home.” In the interview with the social workers, mother blamed her roommate for her situation. After she was informed of the minor’s placement, mother “[e]scalated.” She became

combative and abusive—“[s]cream[ing], ‘You fucking fag, fuck you, fuck you!!’ ” and “ ‘I’m not talking to you’ ”—struck the walls and the window, and “flipped off [the] Social Workers while screaming profanity.” Correctional officers then instructed the social workers to leave.

The Department recommended that the minor be placed in foster care.

After a detention hearing on September 10, 2018, the court found that a prima facie showing had been made in the supplemental petition that the prior disposition of placement of the minor in mother’s care with family maintenance was not effective in protecting the minor. The court found that continued placement in mother’s care was contrary to the minor’s welfare and there was substantial danger to the physical health of the child. It ordered that the minor be placed with the Department.

2. *Adjudication Report on Section 387 Petition and Addendum*

The Department submitted its adjudication report in anticipation of the hearing on the section 387 petition, advising that upon his being placed into protective custody, the minor was placed with D.C. and B.C., a concurrent placement where he had lived from September 2016 (after being discharged from the hospital) to April 2018. D.C. reported that on the minor’s first night back in prospective adoptive parents’ home, he toured the house looking for his old toys and looking at pictures of himself. D.C. felt that the minor had lost weight over the past few months because his clothing was too big for him and he appeared “ ‘gaunt and skinny.’ ” There was a younger foster child, a girl, in the household; D.C. stated that the relationship between the two children was good and that the minor was “ ‘gentle and caring’ towards her.” D.C. advised the Department that the minor had “developed several new ‘swear words’ into his vocabulary and [D.C. was] working with him on using more appropriate words to describe things.” In the first few days after returning to the foster placement, the minor complained that he had fallen and “had ‘hurt [his] head.’ ” D.C. took the minor to his primary care physician for a two-year developmental checkup and no concerns were raised about the minor’s health.

In its report, the Department noted that, after the incident resulting in the minor's detention on September 5, 2018, mother had attended all scheduled supervised visits with the minor. The visits were initially " 'rough' " for the minor and it was necessary for the visit supervisor to hold the minor for most of the first visit. The minor was reportedly " 'withdrawn' during visits," but mother was " 'appropriate during visits' " and "ha[d] been 'good at following suggestions and allowing [the minor] to lead the visits.' " D.C. advised the Department that the minor "is struggling with [the] visits and is confused about who his 'mommy' is." D.C. said that after the visits, the minor was "exhausted . . . often fall[ing] asleep or go[ing] into 'zombie mood.' " D.C. stated that she was working with the minor to make the visits positive experiences, such as having him pick out snacks for the visits and assuring him that the visits would be safe and fun.

The Department noted that it had made several attempts to meet with mother. She initially responded that she wanted to speak to her attorney before meeting. She later advised that she wanted to reschedule the meeting to a later date. And when the social worker called mother to reschedule an appointment, she did not hear back from mother.

The Department observed that mother had apparently safely parented the minor after his return to her care until her arrest on September 5, 2018. It acknowledged that mother "ha[d] made significant strides during this dependency case and continue[d] to verbalize her love and desire to care for her son." But the minor had not been in mother's care for 20 of the 24 months of his life and he was "now at an age where he is far more aware of the circumstances of his life than during his prior placement." The Department expressed concern "that after two years of services, [the minor] still [did] not have a stable or permanent plan that provide[d] he [would] be cared for in a safe and consistent manner by either of his parents." The Department opined that out-of-home placement was necessary to keep the minor safe. The Department recommended that mother not be offered reunification services and that a section 366.26 hearing be scheduled to determine a permanent plan for the minor.

In an addendum report, the Department advised that it had made efforts to contact relatives, including two paternal aunts, the maternal grandmother, and the father of the minor's half-sister. The maternal grandmother expressed interest in the minor being placed with her but was uncertain whether she wished to care for him permanently.

3. *Hearing on Supplemental Petition (§ 387)*

A contested hearing on the Department's section 387 petition occurred on October 31, 2018. The Department submitted the matter upon the adjudication report and the attachments thereto, an addendum report, and the prior documents filed in the proceedings. Mother presented documentary evidence as well as the testimony of mother.

Mother testified that she had relapsed and had "asked someone from [her] sober support network to be with [her] and [her] son. Unfortunately it was not one of [her] dependable people [she had] known for the two years of [her] recovery" and "[the support person] called the police." Mother stated that after her relapse and incarceration, she had called sober support after her release and had attended a meeting. She was admitted into Janus Perinatal a few days later, and she later transitioned into Evolving Door Sober Living Environment (Evolving Door). As of the time of the hearing, she had been with Evolving Door for 47 days. The program was one which permitted children in residence. Mother was in regular contact with her sponsor, and at the outset, she had attended three to four meetings daily. At the time of the hearing, she was attending two to three meetings daily. Mother was also participating in counseling and in the family preservation court program.

Mother also testified that she attended visits with the minor three times per week and had not missed any visits. Mother brought toys and snacks during the visits and read to him. The minor referred to mother as "[m]ommy and momma" during the visits.

Mother asked the court to return the minor to her care at Evolving Door. She testified that she was working (with two small cleaning jobs), had "a small amount of

income,” and that Evolving Door was “a very supportive environment” in which there was available day care. Mother requested that the court return her son to her because she loved him “[a]nd because he needs his mother.”

On cross-examination, mother admitted that she had relapsed twice during the period she had received reunification services and prior to the minor being returned to her care. She knew that part of her safety plan was to contact individuals before relapsing. Mother testified that she had contacted her sponsor before she relapsed in September 2018 but that they had been unable to meet. She admitted she had not tried to contact alternative people who could help her before she relapsed, such as child protective services, the assigned social worker, Janus Perinatal program, Eva Gomez (a substance abuse disorder specialist), or Campos from family preservation court. Mother also admitted that by relapsing, she had not kept the minor safe, and that by running while holding her son to evade the police, she had placed her son at further risk. She testified that what she had done was “completely irrational” and dangerous.

Mother submitted a number of exhibits in support of her contention that the minor should be returned to her custody and care. The exhibits included (1) sign-up sheets showing her attendance at meetings; (2) two letters attesting to mother’s good character and fitness as a mother; (3) a letter from a representative of Bringing Families Home stating that, as mother’s case manager for five months, mother had “show[n] incredible initiative in her search for a better life for both herself and her son . . . and ha[d] taken steps towards achieving her goals of being financially independent and housed in a safe environment for her and her son”; (4) an October 2018 letter from mother’s therapist, Zwick, indicating that she had “[r]ecently . . . added Posttraumatic Stress Disorder, Unspecified, to [mother’s] diagnostic picture,” based upon trauma mother had reported relating to her loss of custody of her daughter four and one-half years prior, the birth and immediate loss of custody of the minor two years prior, and “repeated traumas in [mother’s] childhood related to growing up in a family system in which addiction,

abandonment, neglect, and abuse played a significant role”; (5) written communications from mother, including ones addressed to the court, concerning her desire to have the minor returned to her custody and care; (6) supervised visit logs showing mother’s regular visitation with the minor between September 18 and October 12, 2018; (7) supervised visit logs showing father’s visitation with the minor between October 1 and 12, 2018; and (8) a letter from a Janus counselor, confirming mother’s participation in the Perinatal Residential Treatment Program from September 13, 2018, until stepping down to a lower level of care on October 19, 2018.

After hearing argument, the court sustained the allegations of the section 387 petition. Adopting its tentative ruling, the court found the allegations in the section 387 petition true. It noted that mother had admitted she had taken methamphetamine on September 4, 2018, and it was undisputed that the minor was placed into protective custody on September 5 when mother was arrested for child endangerment at a time when she was under the influence of controlled substances. The court further found the allegations true that mother had fled from law enforcement and had tripped and fallen down stairs while carrying the minor; she had been sweating profusely, causing the minor’s clothing to become saturated; she had shown volatile and paranoid behavior as a result of her drug use; and such use of controlled substances had negatively affected her ability to safely care for the minor. The court also found true the allegation that father had received reunification services that were terminated in November 2017 based upon father’s having made minimal progress with respect to his court-ordered case plan. It found that although father testified he had been clean and sober for three months, this was an inadequate period of time for the court to have confidence that father had mitigated the issues that had initially led to the dependency proceeding.

The court made additional findings in support of its disposition order, including (1) the minor was originally detained on September 27, 2016; (2) the court signed the jurisdiction order and disposition order of removal on November 1, 2016, which included

provision for reunification services; (3) father received 12 months of services, which were terminated on November 7, 2017; (4) mother received 18 months of services, with the minor being placed with mother on April 19, 2018, with family maintenance services; (5) more than 12 months had elapsed since the minor entered foster care; (6) more than 24 months had elapsed since the minor's physical removal; (7) reasonable efforts had been made to prevent or eliminate the need for the minor's removal from the parents' care; (8) an award of custody to either parent would be detrimental to the minor; and (9) by clear and convincing evidence, it was necessary for the minor's welfare that he be removed from mother's physical custody, because there was substantial danger to the minor's physical health, safety, protection, or physical or emotional well-being if the minor were returned to the home and there were no reasonable means of protecting the minor without such removal. Accordingly, the court ordered that the minor be removed from mother's physical custody and that he remain a dependent of the court under the care, custody, and control of the Department for supervision. It ordered further that no family reunification services be provided to parents, mother and father receive monthly supervised visitation, and the section 366.26 hearing be set for January 29, 2019.⁵

H. Department's Section 366.26 Report (January 2019)

In its section 366.26 hearing report filed January 15, 2019, the Department explained that after the minor was placed into protective custody for the second time after being exposed to severe risk of harm by mother on September 5, 2018, the minor was returned to the care of the prospective adoptive parents, D.C. and B.C. The minor had lived with them for approximately 21 months of the 27 months of his life.

⁵ Mother filed a petition for extraordinary writ challenging the court's order of October 31, 2018, in which the court granted the Department's section 387 petition, removed the minor from mother's care, denied mother further services, and scheduled a section 366.26 hearing. This court denied that petition. (*R.K. v. Superior Court, supra*, H046371.)

The Department reported that mother had resumed a supervised visiting relationship with the minor on September 18, 2018. The attached visiting logs show that mother, between September 18 and November 30, had 24 supervised visits with the minor, one no-show, and two cancellations. The visiting logs generally show loving and attentive contact by mother with the minor. As noted in the Department's report, the logs also indicated that the minor experienced anxiety in transitioning between D.C. and mother for some of the visits, and he at times expressed a desire to return to D.C. And as noted in the Department's report, there were occasions in some visits in which mother made inappropriate comments to the minor concerning his genitalia, or made other inappropriate comments.

It was reported by the Department that the prospective adoptive parents had expressed their commitment to adopting the minor. The Department found that the minor was very close and attached to D.C. and B.C., and they had demonstrated "over the past two years that they are capable and willing to meet the [minor's] needs." It concluded that the minor was generally and specifically adoptable.

It was the opinion of the Department that mother and father did "not have a parent/child relationship with the minor. The parent/child relationship has been disrupted and/or absent due to the parent[s'] substance abuse, personal neglect, and absence from the child's day[-]to[-]day life. [Mother] and [father] have not met their child's need for nurturing, emotional stability, security, safety, and physical care that a parent/child relationship should provide on a consistent basis."

The Department recommended that the parental rights of mother and father be terminated. It recommended further that the court establish adoption as the permanent plan for the minor. The Department reported that the minor, at nearly two and one-half years old, had had "a visiting relationship with his mother for all of his life with the exception of the five months that he resided with [her]." It opined that "[t]he visiting relationship that the minor has with the mother and the presumed father does not

outweigh the stability, safety and security that this little boy will gain from the commitment of adoption. As a result, it would not be detrimental to [the minor] if the parental rights of [mother] and [father] were terminated.”

I. CASA Report (January 2019)

CASA representative Santero submitted a report in January 2019 in anticipation of the section 366.26 hearing. Santero stated that the minor had been referred to her in December 2016. She reported that the minor was walking and talking, called D.C. and B.C. “ ‘mama and dada’ ” and that “[h]is vocabulary [was] progressing nicely.” Santero stated that from her observations the minor appeared to be “a happy and loved baby” who was “great at relationships.” She reported that the minor clearly knew her, and that he knew members of the prospective adoptive parents’ family and church. Santero also stated that the minor “plays well with his foster sister [who] . . . is about 15 months old.”

Santero reported further that the minor “still has a very strong reaction when he visits with his birth mom. He acts out physically with his body and is very clingy with [D.C.], the foster mom. He cried the day after a visit with [mother] recently when [Santero] brought him a Christmas present. He wouldn’t open the present and just clung to [D.C.] Otherwise [the minor] is a very stable little guy who plays with [Santero] during visits.”

J. Section 388 Petition (January 2019)

On January 30, 2019, mother filed a section 388 petition. The order that mother addressed in her petition was the October 31, 2018 order on the Department’s section 387 petition, wherein the court removed the minor from mother’s care, denied further reunification services, and scheduled a section 366.26 hearing. Mother stated in her section 388 petition that the court should order that she receive further reunification services because it was in the minor’s best interest “to reunify with [mother] because she has changed, she is [a] safe and sober parent[] and can now provide security and [a] loving home for her son.”

Mother argued in her section 388 petition that since the court's October 31, 2018 order, she had (1) continued to participate in the court's family preservation program; (2) maintained her sobriety and was five-months' sober; (3) regularly attended NA/AA meetings; (4) worked with her sponsor, and had her own sponsee; (5) resided in a Sober Living Environment (SLE) home (Evolving Door), and had done so continuously since October 26; (6) attended counseling with her longtime counselor, Zwick; (7) obtained employment at a photo lab, where she had worked as a technician since December 4; (8) taken steps to obtain a California driver's license; and (9) consistently visited the minor and had been loving and attentive during those visitations. She also stated that the minor had a good relationship with his older sister, with whom he visited on weekends.

Mother provided a number of documents in support of her section 388 petition. Included was a letter from Zwick, dated January 28, 2019. Zwick advised, *inter alia*, that she and mother had been working together since summer 2017, mother had been prepared and engaged in the therapeutic visits, and she had taken significant accountability for her actions. Zwick diagnosed mother with Posttraumatic Stress Disorder (PTSD), Unspecified, and recommended that mother continue with visits every other week.

Subsequent to her filing of the section 388 petition, mother filed additional supporting documents. These documents disclosed, *inter alia*, that mother had completed her intake and signed a rental contract and had moved into the Sobriety Works Women's SLE in Capitola on March 22, 2019.

K. Caregiver Information (March 2019)

The prospective adoptive mother, D.C., filed a caregiver information form on March 22, 2019. She advised the court that she and the minor had been working "in resolving issues relating to the anxiety he experiences from the trauma he sustained in early September as well as the ongoing challenges related to visitation with the biological mother and father. Observation was initially set for every week, but has been reduced to every other week as the minor has improved tremendously since visitation has lessened."

D.C. reported that the minor had adjusted well and was stable in their home and viewed himself as a member of the family. The minor interacted well with extended members of the prospective adoptive parents' family, and he had a good relationship with the one and one-half year old girl residing in the home. D.C. reported further that "[t]he minor is doing exceptionally well and appears to be thriving and growing physically, mentally, & emotionally. The minor does display anxious behavior when any monthly visit with the biological mother occurs. He will request that the caregiver stay with him or ask to stay home. After a monthly visit the minor will be very clingy and vigilant. . . . As the visits have decreased from 3 times per week now to just once a month, the minor has improved drastically and is able to reregulate much more quickly."

D.C. also reported that the prospective adoptive parents had been working to develop postadoption contact agreements (1) with mother, and (2) with the father of C.K. (the minor's half-sibling) for contact between the minor and C.K.

L. Section 388 Petition and Section 366.26 Hearings (March 2019)

The court conducted a section 366.26 hearing and a hearing on mother's section 388 petition on March 27, 2019. The court observed that it intended to hear the evidence together, would then entertain the merits of the section 388 petition, and if it denied that petition, it would proceed to the merits of the Department's recommendations in its section 366.26 report.

The Department introduced without objection its report (with attachments) submitted for the section 366.26 hearing. Mother introduced without objection the following documents: the section 388 petition with attachments; the additional attachments thereafter filed; additional meeting signoffs; photographs of mother, her daughter, and the minor; and visitation logs. The court heard testimony from mother and father.

Mother testified that she had been clean and sober for six months. She lived at the time of the hearing in a sober living environment and had the support of several persons

in the home who had known her for some time during her recovery process. Mother testified that she attended meetings three to five times per week, was working full time, attended family preservation court, and had “lost the desire to use.” She saw her counselor, Zwick, every week until February 2019, when her visits reduced to every two weeks because mother was paying for the sessions. Mother obtained a driver’s license in February 2019 after attending required classes, and she had made arrangements to take delivery on a car later in the week.

Mother testified further that, after her reunification services were terminated, the Department reduced her visits with the minor from three times a week, to once a week, to once every other week, to once a month. After the Department told her she had received her last visit, she lobbied with the case worker to receive at least monthly visits. Mother also pressed the case worker successfully to allow mother’s daughter to attend a visit with the minor. Mother testified that she brought the minor’s favorite foods for the visits as well as things he liked to play with, and that they had “a great time” during the visits.

Mother testified that she was seeking an additional six months of reunification services because she believed the minor deserved to grow up with his mother and his 13-year-old sister, and because mother loved him. She stated that she had “gone above and beyond with the case plan,” had made a mistake, but that the mistake was “part of [her] recovery. And [the minor] doesn’t deserve to pay for that.”

M. Order on Section 388 Petition and Section 366.26 Hearing (March 2019)

After providing its tentative ruling and hearing argument, the court announced its ruling from the bench, which was consistent with its tentative ruling. The court denied mother’s section 388 petition, concluding that she had shown “changing[,] as opposed to changed circumstances,” and that permanence and stability were in the minor’s best interest. The court found under section 366.26 that (1) by clear and convincing evidence, the minor was generally and specifically adoptable; (2) neither mother nor father established that the beneficial parent-child relationship outweighed the benefit of

adoption in this instance; (3) the parental rights of parents would be terminated; and (4) adoption would be ordered as the permanent plan for the minor.

The court entered formal orders on March 27, 2019. It entered an order denying mother's section 388 petition, finding that "[mother's] recent period of non-use of controlled substances and progress on her mental health are changing as opposed to changed circumstances and that it is not in [the minor's] best interest to grant the request." (See *In re Mickel O.* (2011) 197 Cal.App.4th 586, 615 [showing required in section 388 petition is that there are "*changed*, not changing, circumstances"].) The court entered a separate order under section 366.26 under which the court (1) found by clear and convincing evidence that it was likely the minor would be adopted, (2) ordered that the termination of the parental rights of mother and father, and (3) found that it was likely that adoption would be finalized by September 10, 2019. The court entered a third order designating D.C. and B.C. as prospective adoptive parents.

Mother and father filed separate timely notices of appeal from the court's orders of March 27, 2019.

II. DISCUSSION

A. Applicable Legal Principles

1. Dependency Law Generally

Section 300 et seq. provides "a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child's welfare. [Citations.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) As our high court has explained, "The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest

that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

After it has been adjudicated that a child is a dependent of the juvenile court, the exclusive procedure for establishing the permanent plan for the child is the selection and implementation (permanency planning) hearing as provided under section 366.26. The essential purpose of the hearing is for the court “to provide stable, permanent homes for these children.” (*Id.*, subd. (b); see *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1797.) There are six statutory choices for the permanency plan; the preferred choice is adoption, coupled with an order terminating parental rights. (§ 366.26, subd. (b); see also *In re Celine R.*, *supra*, 31 Cal.4th at p. 53 [“Legislature has thus determined that, where possible, adoption is the first choice”]; *ibid.* [where child is adoptable, “adoption is the norm”].) The court selects this option if it “determines . . . by a clear and convincing standard, that it is likely the child will be adopted.” (§ 366.26, subd. (c)(1).)

Thus, at the section 366.26 hearing, “in order to terminate parental rights, the court need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated. . . . ‘[T]he critical decision regarding parental rights will be made at the dispositional or review hearing, that is, that the minor cannot be returned home and that reunification efforts should not be pursued. In such cases, the decision to terminate parental rights will be relatively automatic if the minor is going to be adopted.’ [Citation.]” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250.)

“If the court determines it is likely the child will be adopted, certain prior findings by the juvenile court (e.g., that returning the child to the physical custody of the parent would create a substantial risk of detriment to the physical or emotional well-being of the

child) shall constitute a sufficient basis for the termination of parental rights unless the juvenile court finds one of six specified circumstances in which termination would be detrimental [to the child].” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1522-1523, citing § 366.26, subd. (c)(1).) One such circumstance—the one asserted by mother here—is the beneficial parental relationship exception to adoption discussed below. (§ 366.26, subd. (c)(1)(B)(i).) The six specified circumstances in section 366.26, subdivision (c)(1)(B) are “actually, *exceptions* to the general rule that the court must choose adoption where possible.” (*In re Celine R., supra*, 31 Cal.4th at p. 53.) They “ ‘must be considered in view of the legislative preference for adoption where reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Ibid.*, original italics.)

2. Beneficial Parental Relationship Exception

As noted, if the court determines at the section 366.26 hearing by clear and convincing evidence that it is likely the child will be adopted, the court is required to terminate parental rights except under specific statutory circumstances. The relevant exception here is the beneficial parental relationship exception under which if “[t]he court finds a *compelling* reason for determining that termination [of parental rights] would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B), italics added.) There are thus three component determinations made by the juvenile court, the first two of which establish the existence of a beneficial parental relationship, and the third being the court’s assessment of whether that relationship (assuming its existence) presents a compelling reason not to terminate parental rights. Those three “ ‘component

determinations [are]—[(1)] whether the parent has maintained regular visitation, [(2)] whether a beneficial parental relationship exists, and [(3)] whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” ’ [Citations.]” (*In re Caden C.* (2019) 34 Cal App.5th 87, 104.)

Assessment of the first component is “quantitative and relatively straightforward, asking whether visitation occurred regularly and often.” (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) It is an evaluation of “whether the parent consistently has contact with the child.” (*Id.* at p. 613.) “ ‘Sporadic visitation is insufficient to satisfy the first prong . . .’ of the exception.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.)

Determination of the second component of “whether the nature and extent of a particular parent-child relationship is sufficient to be deemed ‘beneficial’ . . . is a more involved inquiry, made on a case-by-case basis by taking into account many variables which affect the parent/child bond.” (*In re Caden C., supra*, 34 Cal App.5th at p. 104.) In this case-specific endeavor, the court looks at such factors as “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) “No matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’ [Citations.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) Although day-to-day contact is not required, the relationship “characteristically aris[es] from day-to-day interaction, companionship and shared experiences.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

In assessing the third component, assuming the parent establishes the existence of a beneficial parent-child relationship, the juvenile court must then determine whether the relationship “constitutes a ‘compelling’ reason to forgo termination of parental rights.” (*In re Caden C., supra*, 34 Cal App.5th at p. 105.) In doing so, the court performs a

balancing task of determining whether “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly harmed*, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added.) But “ ‘[a] biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.’ [Citation.]” (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643, original italics.)

The burden is on the parent asserting the beneficial parent relationship to produce evidence establishing that exception. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) The parent must prove the exception by a preponderance of the evidence. (*In re Caden C.*, *supra*, 34 Cal App.5th at p. 104.)

3. *Standard of Review*

Review of a court’s determination of the applicability of the beneficial parental relationship exception under section 366.26 is governed by a hybrid substantial evidence/abuse of discretion standard. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) As a panel of this court explained in *In re Bailey J.* with respect to the first part of this hybrid standard: “Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental . . . relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination. Thus, . . . a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention

that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Id.* at p. 1314.)

This court explained the second component of the hybrid standard of review as follows: “The other component of . . . the parental relationship exception . . . is the requirement that the juvenile court find that the existence of that relationship constitutes a ‘*compelling reason* for determining that termination would be detrimental.’ (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a ‘compelling reason’ for finding detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, original italics; see also *In re J.C.* (2014) 226 Cal.App.4th 503, 530-531 [following *In re Bailey J.*]; *In re K.P.*, *supra*, 203 Cal.App.4th 614 at pp. 621-622 [same].)

B. Finding that Mother Did Not Prove The Exception Was Not Error

The juvenile court found by clear and convincing evidence that the minor was generally and specifically adoptable. There was a wealth of evidence to support this finding, and mother does not challenge the finding on appeal. Her contention is that the court erred in finding inapplicable the beneficial parent-child relationship that she presented as a potential exception to the court’s obligation to choose adoption wherever possible.

Mother contends that she established the first component of the exception, showing that she regularly visited the minor. The juvenile court specifically found that

mother had consistently and regularly visited the minor, the Department does not challenge this finding, and it is supported by substantial evidence. (See *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

The record is unclear as to the juvenile court's finding regarding the second component, i.e., “ ‘whether a beneficial parental relationship exists.’ ” (*In re Caden C.*, *supra*, 34 Cal App.5th at p. 104.) The record does not show that the court made a specific finding that such a beneficial parental relationship existed between mother and the minor. Rather, the court's comments suggest it concluded that no such beneficial relationship was established. In announcing its decision, the court observed that “there is a benefit of having [the] biological mother and father involved in a child's life. And I want to acknowledge and recognize both [father] and [mother], that there is a benefit in that. And . . . that is important to [the minor].” The court later concluded that “the parents' role in [the minor's] life is definitely more akin to that [of] friendly visitor, and that the incidental benefit that [he] get[s] from the interactions with [his] birth parents is not enough to outweigh the benefits of stability to this child.”

In determining whether the parent has established the existence of the beneficial parent-child relationship, the juvenile court considers factors such as “[t]he age of the child, the portion of the child's life spent in the parent's custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child's particular needs.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Here, the minor was slightly more than two and one-half years old at the time of the section 366.36 hearing. Of that time, he had spent less than five months, or less than 20 percent of his life, in mother's custody and care. The minor had spent the remainder of his time—after his release from the hospital 15 days following complications from his birth with controlled substances in his system—with the prospective adoptive parents. He thus—as noted by the Department—had had a “visiting relationship” with his mother for the vast majority of his life.

The visitation logs, as well as certain reports presented to the court, assist in evaluating the positive and negative effects of the interactions between mother and the minor. The record before us shows that between September 5, 2018 (i.e., the date of the minor's second removal) and March 27, 2019, mother had 29 supervised visits with the minor. In general, the logs reflect that the interactions between mother and the minor during visits were positive. Mother brought food, gifts, toys, and books to the minor during visits. In general during the visits, mother played with the minor, read to him, changed his diapers, fed him snacks, praised him, and expressed her love and affection for him.

But the visitation logs also disclose negative effects from the parent-child interactions. They show that the minor had difficulty at the beginning of some of the visits (approximately nine) in transitioning to mother, such as crying during the exchange, reaching for the visit supervisor rather than mother, or turning away from mother. In some of the visits, the minor took physical action, such as kicking or pushing, to get distance from mother. During a number of the visits with mother, the minor expressed a desire to return to D.C. and his home before the end of visitation. The record of the mother's visits with the minor does not show that the minor experienced any emotional detriment when separating from mother at the end of visits.

The negative effects of the interaction between mother and the minor in visitation are disclosed in other reports besides the visitation logs themselves. The minor's CASA representative, Santero, advised the court that, as of January 2019, the minor "still ha[d] a very strong reaction when he visit[ed] with his birth mom. He acts out physically with his body and is very clingy with [D.C.]" Santero described the minor's negative response to a visit with mother he had near Christmas 2018. Further, D.C. advised the court in March 2019 that the minor "display[ed] anxious behavior when any monthly visit with . . . mother occur[red]. He [would] request that [D.C.] stay with him or ask to stay

home.” D.C. reported that the minor would “be very clingy and vigilant” after visits with mother.

Further, in considering the particular needs of the minor, it must be emphasized that the prospective adoptive parents have provided a stable and loving home environment for the majority of the minor’s life. The record shows that the minor has been happy in that home, and has become well-integrated with the family of D.C. and B.C. In juxtaposition to the minor’s home life with D.C. and B.C., the circumstances that led to the minor becoming a dependent child of the juvenile court in out-of-home placement must be noted here. Without detailing each of those facts that were recited, *ante*, the minor’s original detention came about because he was born with controlled substances in his system and was suffering from withdrawal symptoms as a result of mother’s consistent drug use during her pregnancy. After mother made significant and commendable strides in addressing her substance abuse—to the extent that the minor was returned to her care in April 2018 with family maintenance services—mother had a significant relapse in September 2018 in which she exposed the minor to a grave risk of harm. She herself testified in an earlier proceeding that her behavior was “completely irrational” and dangerous.

In sum, the evidence, including a review of the mother’s visitation logs in their totality, supports the conclusion of the juvenile court that mother’s role with the minor was “more akin to that as a friendly visitor” than as a parent. It must be emphasized that “ ‘[t]he exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship. [Citation.]” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.) The juvenile court’s implied finding that mother did not establish a beneficial parental relationship was supported by substantial evidence. (*Id.* at p. 1314.)

But even if we were to assume that the court in fact concluded that mother established the existence of a beneficial parental relationship, the court did not err in rejecting mother's contention that such relationship constituted "a compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).)

The court in its ruling reasoned that when it weighed the "benefit of having [the] biological mother and father involved in a child's life" "with the permanence and stability that [the minor] gets from being in a long-term relationship with a family who's committed to adopting him, there's no question that that permanence and stability outweigh[] the benefits that he gets from having a relationship with his biological parents." This reasoning was consistent with the Department's recommendation of termination of parental rights because mother's and father's "visiting relationship" with the minor did "not outweigh the stability, safety and security that this little boy will gain from the commitment of adoption."

The evidence discussed above relating to the court's implied finding that there was no beneficial parental relationship is equally relevant here to the court's finding weighing the benefits of adoption against the termination of parental rights. Mother provided no specific evidence that showed a "compelling reason" why termination of parental rights would be detrimental to the minor. (§ 366.26, subd. (c)(1)(B).) Mother had the burden of overcoming the preference for adoption by establishing that the severance of "the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly harmed*." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, italics added.) Therefore, even assuming the juvenile court found the existence of a beneficial parental relationship, it did not abuse its discretion in concluding that it was not "a compelling reason for determining that termination [of her] parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1)(B); see *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315 [abuse of discretion standard applies to

juvenile court’s finding of whether parental relationship is compelling reason for finding detriment to child].)⁶

We recognize that there are facts in the record showing that mother made great efforts throughout these proceedings to address her substance abuse and to address the problems that resulted in the minor’s being placed in out-of-home care. We also commend her other efforts to improve her life, including finding stable housing and locating employment. And we acknowledge the love that mother and father have for their child. Under the circumstances presented here, however, we conclude that the court did not err in finding that the minor was likely to be adopted and in terminating parental rights under section 366.26, subdivision (c).

III. DISPOSITION

The orders of March 27, 2019, (1) denying mother’s petition pursuant to section 388; (2) after a hearing pursuant to section 366.26, finding that it was likely the minor would be adopted and terminating the parental rights of mother and father; and (3) designating D.C. and B.C. as prospective adoptive parents, are affirmed.

⁶ Mother argues that this court should “apply the substantial evidence standard of review in determining whether legal error occurred in this case.” We understand from this statement that mother urges that the abuse of discretion standard we enunciated in *In re Bailey J.*, *supra*, 189 Cal.App.4th at page 1315 should not be applied here in our review of the court’s finding that any assumed beneficial parental relationship did not provide a compelling reason that termination of parental rights would be detrimental to the child. We acknowledge that certain courts have applied the substantial evidence standard of review to all aspects of the juvenile court’s determination regarding the parent’s assertion of the beneficial parental relationship exception. (See, e.g., *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.) Even were we to apply the substantial evidence standard, the juvenile court did not err in finding that any assumed beneficial parental relationship did not constitute a compelling reason for determining that termination of parental rights would be detrimental to the child.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

In re D.L.; Santa Cruz County HSD v. D.L. et al.
H046761